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6  
7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**

9 JASON WALTON

10 Plaintiff,  
11 v.

12 UNITED STATES OF AMERICA  
through the DEPARTMENT OF  
13 AGRICULTURE, FOREST  
SERVICE,

14 Defendant.

Case No. 5: 15-CV-114

**COMPLAINT PURSUANT TO  
FEDERAL TORT CLAIMS ACT FOR  
DAMAGES FOR NEGLIGENCE  
ARISING FROM THE DANGEROUS  
CONDITION OF GOVERNMENT  
PROPERTY**

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18  
19 **JURISDICTION AND VENUE**

20 1. On March 24, 2013, Plaintiff Jason Walton had a significant motorcycle  
21 accident due to the creation of a dangerous man-made condition, the result of  
22 governmental negligence, while he was lawfully riding his motorcycle on a signed trail in  
23 San Bernardino National Forest, which is under the jurisdiction and control of the  
24 United States Department of Agriculture, Forest Service. Plaintiff sues under the  
25 Federal Tort Claims Act (FTCA).

26 2. Jurisdiction of the Court is founded upon 28 U.S.C. § 1346(b).

27 3. This action arises out of acts that occurred in the Central District of  
28 California, and therefore venue lies in this District pursuant to 28 U.S.C. § 1391.

**PARTIES**

4. Plaintiff Jason Walton is an adult competent to sue on his own behalf.

5. Defendant United States of America, by and through its agency, the Department of Agriculture, Forest Service (hereinafter "Forest Service") operated, at all relevant times, as an agency concerned and/or charged with the administration and maintenance of National-Forest related matters in the United States of America, including in the San Bernardino National Forest. Defendant is subject to suit pursuant to the Federal Tort Claims Act (FTCA).

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6. Plaintiff timely filed the appropriate "Claim for Damage, Injury or Death" on May 22, 2014, with the Department of Agriculture. The claim has been acknowledged, and transferred to the Department of Agriculture's Office of General Counsel for determination. The claim has neither been accepted nor rejected, making this lawsuit neither too soon nor too late.

**FACTUAL ALLEGATIONS AND CLAIM FOR RELIEF**

7. Plaintiff Jason Walton is an experienced off-road motorcyclist. On March 24, 2013, he purchased an Adventure Pass from the Forest Service so that he could ride on Santa Fe Road, the entry to which is located near the Silverwood Exit (Hwy 138) from Interstate 15 in the San Bernardino National Forest, which is located in San Bernardino County, California. A copy of the pass is attached as Exhibit A. The road was marked "green," which indicates the safest terrain. Mr. Jason was with two companions and was properly attired with protective leathers and a helmet. Mr. Walton rode his 2004 KTM 400 Model EXE northbound at the appropriate rate of speed for a trail rated green. He fully exercised due care for his own safety.

8. Just south of the Interstate 15 underpass, Plaintiff rode around a blind turn and was surprised by a metal cattle crossing with the ground with an exposed 12- to 15- inch ledge facing him. A photograph of the ledge is attached as Exhibit B. Because of the blind turn, combined with the green rating, Plaintiff could not react in time to this unexpected man-made hazard. Instead his front wheel hit flush, stopping the bike, bending the wheel, causing Plaintiff to fly over the handlebars, cracking his helmet, and causing serious personal injuries. His friends were able to remove him from the location and transport him to St. Bernardine Medical Center.

1           9.       As a result of this accident, Plaintiff sustained significant physical injuries, including  
2 some that are permanent. The impact shattered his right radius. Despite surgery and therapy, he  
3 still has significant impairment of his dominant hand. He also sustained fractures and tendon  
4 damage in his left foot, which may result in future surgeries and has left a significant residual.  
5 Plaintiff has, to date, accrued significant medical expenses and will continue to do so in the future.  
6 Besides transient and permanent physical injuries, Plaintiff also sustained property damage to his  
7 motorcycle and other equipment, and lost, or will lose, wages and other income in past and future  
8 amounts in accordance with proof.

9           10.      The accident was proximately caused by the negligence of the Forest Service and its  
10 employees, who created the dangerous condition that caused Plaintiff's injuries. Accordingly,  
11 Plaintiff claims damages based on negligence pursuant to 28 U.S.C. § 1346(b)(1).

12           11.      The Forest Service designates certain areas, including the area where Plaintiff's  
13 accident occurred, and certain trails, including the trail with the dangerous cattle-crossing ledge,  
14 specifically for off-road vehicle (ORV) use. The Forest Service charges admission through the sale  
15 of Adventure Passes, and gives notice of potential hazards through signs using the color coding  
16 system. This ORV trail was rated green, the safest and easiest ORV level. The Forest Service  
17 knows that ORV riders rely on its expertise, vigilance and color-coding warning system when using  
18 the trails. The Forest Service installed and knew about the cattle-crossing, and knew that a  
19 hazardous ledge was developing over time through foreseeable erosion. Nevertheless, the Forest  
20 Service induced a false sense of security in ORV users such as Plaintiff by color coding the trail  
21 green, thus creating the danger that caused Plaintiff's injury.

22           12.      The negligence of the Forest Service and its employees, acting within the course  
23 and scope of their employment, was the proximate and legal cause of Plaintiff's injuries and  
24 damages. Plaintiff's allegations of government negligence and other wrongdoing are, at minimum,  
25 fourfold: First, the man-made cattle guard needed to be monitored over time for erosion. Second,  
26 the hazardous ledge should not have been allowed to develop by leveling the ground in front of  
27 the cattle crossing to prevent the ledge hazard. Third, or alternatively, a warning sign should have  
28 been posted before the blind turn so that ORV riders would get notice that a significant man-

1 made hazard lay around the corner. Fourth, if the trail was not going to be maintained in a  
 2 reasonably safe manner by the Forest Service following options 1, 2, and 3, the trail should not  
 3 have been rated green. By giving the trail its lowest hazard (highest safety) rating the Forest Service  
 4 and its employees created in Plaintiff and other users an expectation of safety and a false sense of  
 5 security that the trail would be free of concealed and unexpected man-made hazards such as the  
 6 cattle-crossing ledge. In other words, the Forest Service failed to warn of a known, latent hazard  
 7 that the Forest Service itself created. The failure to do so was not the result of any policy decision  
 8 involving the weighing of competing interests, such as the impact of signs or other environmental  
 9 maintenance. Accordingly, this claim is not barred by the “discretionary function exception,” of  
 10 28 U.S.C. § 2680(a). *See, e.g., Young v. United States*, 769 F.3d 1947 (9th Cir. 2014).

11 13. As a proximate result of Defendant’s officers and agents negligent conduct as set  
 12 forth above, Plaintiff was hurt and injured in his health, strength and activity, sustaining injury to  
 13 his nervous system and person, all of which have caused, continue to cause, and will in the future  
 14 cause great mental, physical and nervous pain and suffering, humiliation, shock, distress and  
 15 anguish, loss of enjoyment of life, medical and related expenses, lost income and wages, and  
 16 property damage, including loss of use, all in amounts to be proven at time of trial.

17 WHEREFORE, Plaintiff prays that he recover:

- 18 a. Compensatory general and special damages in an amount in accordance with proof;
- 19 b. Costs and post-judgment interest; and
- 20 c. Such other and further relief as the Court deems just and proper.

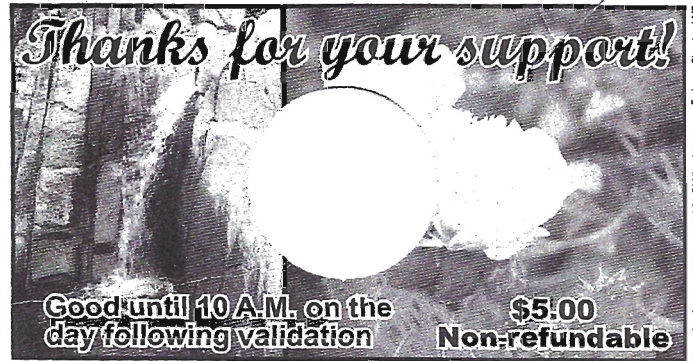
21  
 22 Dated: January 19, 2015

THE LAW OFFICES OF JOHN BURTON

23  
 24 By \_\_\_\_\_ /s / \_\_\_\_\_

25 John Burton,  
 26 Attorneys for Plaintiff  
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**EXHIBIT A**



# DAILY PASS

*Scratch off day*

**This side must face out, display in clear view.**

1	17
2	18
3	19
4	20
5	21
6	22
7	23
8	24
9	25
10	26
11	27
12	28
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14	30
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Pass must be removed from mirror when vehicle is in motion. CVC 267000



## National Forest Adventure Pass

ANGELES, CLEVELAND, LOS PADRES,  
SAN BERNARDINO NATIONAL FORESTS

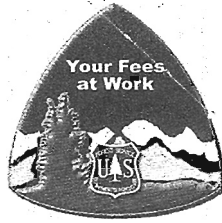
*Scratch off month*

JAN.	FEB.	MAR.
APR.	MAY	JUNE
JUL	AUG.	SEPT.
OCT.	NOV.	DEC.

### Validate Your Pass

You must validate your pass by scratching off the day and month after you have arrived at your destination. There is a maximum fine of \$100 for failure to display the pass, in accordance with 36 CFR 261.17.

**Daily** D3- 303628



### **NATIONAL FOREST ADVENTURE PASS**

Thank you for supporting National Forest lands by purchasing this **Pass**. Display your pass in your vehicle, it covers any standard amenity fee for the National Forests in Southern California. Recreation Fee sites and areas will be designated with signs. There may be additional fees or permits required for other activities like campground, OHV and wilderness use.

#### **Your Pass at Work**

The **Adventure Pass** program improves resource conditions and recreation opportunities. Eighty percent (80%) of the revenues will be invested locally on the Angeles, Cleveland, Los Padres or San Bernardino National Forests for on the ground projects.

#### **Secure Your Vehicle and Protect Your Pass**

Lock your car and secure articles out of sight. The Forest Service is not responsible for fire, theft, damage or loss of articles. Lost, stolen, or damaged passes will not be replaced. No receipt has been provided.



**Always Check for  
Current Forest Conditions**

This **Pass** does not guarantee access to your forest destination, nor does it reserve any portion of National Forest land for use. Weather and Fire restrictions can affect access to the Forest. Always call ahead for current conditions before leaving on your outing. Forest office phone numbers and websites are listed below:

#### **Angeles National Forest**

(626) 574-1613 • [www.fs.fed.us/r5/angeles/](http://www.fs.fed.us/r5/angeles/)

#### **Cleveland National Forest**

(858) 673-6180 (800) 735-2922 TTY

[www.fs.fed.us/r5/cleveland/](http://www.fs.fed.us/r5/cleveland/)

#### **Los Padres National Forest**

(805) 968-6640 (805) 968-6790 TTY

[www.fs.fed.us/r5/lospadres/](http://www.fs.fed.us/r5/lospadres/)

#### **San Bernardino National Forest**

(909) 382-2600

[www.fs.fed.us/r5/sanbernardino/](http://www.fs.fed.us/r5/sanbernardino/)

Visit the **National Forest Adventure Pass** website at:

**<http://www.fs.fed.us/r5/sanbernardino/ap/>**

**Promptly Report Fires and Emergencies to 911**

